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SUICIDE AS A DEFENSE IN LIFE INSURANCE

At last the unfortunate decision of the Supreme Court of the United States in *Ritter v. Mutual Life Ins. Co.*¹ will cease to trouble lawyers and underwriters and to mislead courts. In *Northwestern Mutual Life Ins. Co. v. Johnson* and *National Life Ins. Co. v. Miller*,² recently decided by the Supreme Court, the Ritter Case was tacitly repudiated by that process of casual reference which Mr. Justice Holmes uses so gracefully. No one could complain of the result actually reached in the Ritter Case; for, as Mr. Justice Holmes remarks, "all the circumstances gave moral support to the construction of the policy adopted by the court." The court might well have decided that the policies involved in that famous case were avoided by the fraudulent conduct of the insured in taking out insurance in an excessive amount, with the wrongful intent of bringing the policies to an untimely maturity by ending his own life, and thus making good his own heavy defalcations at the expense of the insurance companies.³ But the state of the record did not permit such a simple disposition of the cause. What the court actually decided was that there was no error in the trial court's instruction to the jury that "There could be no recovery by the estate of a dead man of the amount of policies of insurance upon his life if he takes his life designedly, whilst in sound mind." For upholding this broad statement of the law, the Supreme Court gave two reasons: (1) In the absence of an express exception of sane suicide in any contract of life insurance, such an exception is to be implied; (2) an express provision for payment in case of suicide while sane would be void as opposed to public policy.

This decision has signally failed to secure the support of the state courts. Some have refused outright to accept the decision as sound.⁴ Many others have limited its application to policies payable to the insured's estate, and therefore held that no such exception could be implied to defeat the claim of a designated beneficiary other than the insured's personal representatives.⁵ It is manifest, however, that such

¹ (1898) 169 U. S. 139, 18 Sup. Ct. 300.

² (1920, U. S.) 41 Sup. Ct. 47.

³ It seems to be universally held that such a fraud will avoid a policy. *Campbell v. Supreme Conclave* (1901) 66 N. J. L. 274, 49 Atl. 550; *Parker v. Des Moines Life Assn.* (1899) 108 Iowa, 117, 78 N. W. 826; *Supreme Conclave Improved Order of Heptasophs v. Miles* (1901) 92 Md. 613, 48 Atl. 845; *Smith v. National Benefit Society* (1890) 123 N. Y. 85, 25 N. E. 197.

⁴ See *Campbell v. Supreme Conclave*, *supra*; *Patterson v. Natural Premium Life Ins. Co.* (1898) 100 Wis. 118, 7 N. W. 980; *Lange v. Royal Highlanders* (1905) 75 Neb. 188, 106 N. W. 224, 110 N. W. 1110.

⁵ *Grand Legion v. Beatty* (1906) 224 Ill. 346, 99 N. E. 565, 8 L. R. A. (n. s.) 1124, note; *Shipman v. Protected Home Circle* (1903) 174 N. Y. 398, 67 N. E. 83; *Parker v. Des Moines Life Assn.*, *supra* note 3; *Morris v. State Mut. Life Assur. Co.* (1898) 183 Pa. 563, 39 Atl. 52. Recovery in such cases is allowed to the third party beneficiary on the ground that such beneficiary has

a limitation of the rule announced in the Ritter Case is indefensible; and this is recognized by the Supreme Court in *Northwestern Mutual Life Ins. Co. v. McCue*,⁶ in which it is properly said with reference to the analogous implied exception of death by legal execution, that "the policy is the measure of the rights of everybody under it." If suicide is a risk not covered by the policy, the rights of the third party beneficiary claiming under it are no greater than those of the insured's estate.⁷ Hence all cases allowing recovery to a designated beneficiary virtually repudiate the Ritter Case.

It is believed that the doctrine of the Ritter Case has been fully accepted in only one of the American states.⁸ Even in Alabama, which furnished the sole American precedent for the Ritter Case,⁹ the supreme court of the state, while still rendering lip service, has virtually repudiated it.¹⁰ So deep-seated is the revolt against the doctrine that in no fewer than four states statutes have been passed prohibiting, either absolutely or with qualifications, the setting up of suicide as a defense in actions on insurance policies.¹¹ In Georgia, in spite of a statute of long standing which declares that sane suicide avoids a life insurance policy, it has been held that no such public policy is involved as will preclude the insurer from waiving the benefit of the statute and expressly contracting to pay in case of the insured's suicide.¹²

With the authorities in such a state it is not to be wondered that the Circuit Court of Appeals for the Eighth Circuit should have

a vested right in the policy which can not be defeated by the sole act of the insured. In a few cases it is held that the beneficiary named in a mutual benefit certificate, not having a vested interest in the contract, is subject to the defense of suicide to the same extent as the personal representative of the insured. See *Shipman v. Protected Home Circle*, *supra*, and *Davis v. Supreme Council Royal Arcanum* (1907) 195 Mass. 402, 81 N. E. 294.

⁶ (1912) 223 U. S. 234, 32 Sup. Ct. 220.

⁷ *Campbell v. Supreme Conclave*, *supra* note 4; *Davis v. Supreme Council Royal Arcanum*, *supra*; *Security Life Ins. Co. v. Dillard* (1915) 117 Va. 401, 84 S. E. 656, Ann. Cas. 1917 D, 1187, note; *Hopkins v. Northwestern Mut. Life Ins. Co.* (1899, C. C. E. D. Pa.) 94 Fed. 729.

⁸ *Security Life Insurance Co. v. Dillard*, *supra*. See also *Shipman v. Protected Home Circle*, *supra* note 5.

⁹ *Supreme Commandery v. Ainsworth* (1882) 71 Ala. 436.

¹⁰ See the interesting case of *Mutual Life Ins. Co. v. Lovejoy* (1917) 201 Ala. 337, 78 So. 299, L. R. A. 1918 D, 860, note, determined by a divided court on a rehearing, reversing a previous opinion.

¹¹ Missouri, Rev. St. 1909, sec. 6945, construed in *Whitfield v. Aetna Life Ins. Co.* (1907) 205 U. S. 489, 27 Sup. Ct. 578; *Applegate v. Travelers' Ins. Co.* (1910) 153 Mo. App. 63, 132 S. W. 2; Colorado, Laws 1903, ch. 119, declared constitutional in *Head Camp v. Sloss* (1910) 49 Colo. 177, 112 Pac. 49, 31 L. R. A. (N. S.) 831, note; North Dakota, Rev. Codes 1905, sec. 6064, construed in *Har-rington v. Mut. Life Ins. Co.* (1911) 21 N. D. 447, 131 N. W. 246; Texas, Vernon's Sayles' Ann. Civ. St. 1914, art. 174, discussed in *Floyd v. Ill. Bankers' Life Assn.* (1917, Tex. Civ. App.) 192 S. W. 607.

¹² *Mut. Life Ins. Co. v. Durden* (1911) 7 Ga. App. 797, 72 S. E. 295.

thought it advisable to inquire of the Supreme Court as to what rule of law was applicable to two cases pending before it. In the first of these cases, *Northwestern Mutual Life Ins. Co. v. Johnson*, the policy in suit, granted upon the life of one Johnson, and payable to his wife, contained a provision that "if within two years from the date hereof, the said insured shall, . . . while sane or insane, die by his own hand, then, and every such case, this policy shall be void"; while the second, on the same life and payable to the insured's estate, was silent as to suicide, but contained the usual clause declaring it to be incontestable after one year from the date of its issue. Johnson died by his own hand while sane, more than two years after the policies had been issued. The court held that the effect of the incontestable clause was the same as if an express undertaking to pay in case of suicide had been inserted in the policy,¹³ and that the provision above quoted in the first policy was but "an inverted expression of the same general intent"; that "both equally mean that suicide of the insured, sane or insane, after the specified time shall not be a defense." By reaching this conclusion the court by inference distinguished the Ritter Case, in so far as it rested upon the doctrine of implied exception, which was declared to be the real basis of the decision. It only remained to declare in the light of the Whitfield Case,¹⁴ that the question of the validity of an express undertaking to pay in case of suicide depends on the policy of each state, and then by one bold and long step, to hold that unless the state concerned had taken a different attitude, the Court would uphold such an undertaking. In the absence of any showing as to the policy of the states concerned in these contracts, or, indeed, as to what states were concerned, the Court obligingly determined the policy of the unknown states for them and declared the insurer liable in each case.

The opinion does not expressly overrule the Ritter Case, and it can, and doubtless will be, argued that it leaves undisturbed the doctrine established in that case to the effect that there is an implied exception of death by suicide when sane in every policy which does not, by way of incontestable clause or otherwise, contain an express provision concerning suicide. But such arguments will not prevail. It is a

¹³ A very different interpretation of a similar incontestable clause was arrived at in *Mutual Life Ins. Co. v. Lovejoy*, *supra* note 10. Here the court assumed that an express promise to pay in case of death by suicide while sane would be void as contrary to public policy, but held that it was nevertheless competent for the insurer to waive the defense by inserting the incontestable clause in its policy. It is generally held that the incontestable clause cuts off the defense not only when the policy is silent as to suicide, but also when it contains an express exception of death by self destruction. *Mut. Life Ins. Co. v. Durden*, *supra*; *Goodwin v. Provident Savings Life Ins. Co.* (1896) 97 Iowa, 226, 66 N. W. 157; *Harrington v. Mut. Life Ins. Co.*, *supra* note 11; *Krebs v. Phila. Life Ins. Co.* (1915) 249 Pa. 330, 95 Atl. 91; *Silliman v. International Ins. Co.* (1915) 13 Tenn. 303, 174 S. W. 113; *Mutual Reserve Fund Life Assn. v. Payne* (1895, Tex. Civ. App.) 32 S. W. 1063.

¹⁴ *Whitfield v. Aetna Life Ins. Co.*, *supra* note 11.

strangely inconclusive opinion to come from the pen of Mr. Justice Holmes, but it has put an end to the misconceived doctrine of the Ritter Case.

The opinion in the principal cases makes reference without comment to *Northwestern Mutual Life Ins. Co. v. McCue*,¹⁵ in which it was held that public policy required a similar implied exception of death by execution upon conviction of crime, and to *Burt v. Central Life Ins. Co.*,¹⁶ in which the Court refused to allow the admission of evidence that the insured was innocent of the crime for which he was executed. These cases appear to be supported by some respectable English authority having a very different historical background,¹⁷ but they rest principally upon the reasoning of the opinion in the Ritter Case, now so thoroughly discredited. They stand upon a far more infirm foundation than the Ritter Case, and are repugnant to the simplest principles of common justice, and even common sense. It is to be hoped that they too may soon be relegated to innocuous desuetude along with the Ritter Case.

W. R. V.

PRESENT DAY LABOR LITIGATION

After disposing of the question as to whether or not a given strike has a justified object, as discussed in a previous comment,¹ we are next confronted by the question as to whether legal methods are employed in the furtherance of the strike. The strike may be for a lawful object, yet the means used may be declared illegal. This is a common occurrence in labor litigation and it is well to realize wherein these two situations differ.

It has previously been shown that practically any concerted action by the employees against their employers constitutes a prima facie tort requiring justification. This justification consists in having as the object of the strike certain ends which the courts have gradually come to recognize as legitimate, thus creating a privilege to do something that is prima facie tortious. But there is no prima facie case against the employee with respect to the means used; if a strike is for a lawful object, the burden is on the plaintiff to show unlawful means. Thus either illegal means or an illegal object will give rise to a cause of action.²

¹⁵ (1912) 223 U. S. 234, 32 Sup. Ct. 220.

¹⁶ (1902) 187 U. S. 362, 27 Sup. Ct. 139.

¹⁷ *Amicable Society v. Bolland* (1830, H. L.) 4 Bligh (N. R.) 194. In *Collins v. Metropolitan Life Ins. Co.* (1907) 232 Ill. 37, 83 N. E. 542, 14 L. R. A. (N. S.) 356, note, it is clearly shown that at the time of the decision of this case forfeiture upon conviction of felony was still in force in England. It therefore affords an unsafe precedent in the United States, where such forfeitures are unknown.

¹ COMMENTS (1921) 30 YALE LAW JOURNAL, 280.

² *Willcutt v. Driscoll* (1908) 200 Mass. 110, 85 N. E. 897; *Schwarcz v. International Union* (1910, Sup. Ct.) 68 Misc. 528, 124 N. Y. Supp. 968.